UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 12 2014

Herschel T. Vinyard
Secretary
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Dear Secretary Vinyard:

The United States Environmental Protection Agency has completed its review of the remaining revisions adopted as part of the State's Triennial Review, which were not addressed in the Agency's September 9, 2013, approval. All of the Triennial Review revisions were approved for adoption by the Florida Environmental Regulation Commission at a public hearing on April 23, 2013. On July 17, 2013, the EPA received a letter from Matthew Z. Leopold, General Counsel of Florida Department of Environmental Protection, to A. Stanley Meiburg, Acting Regional Administrator, U.S. EPA Region 4, dated July 16, 2013, certifying that the amendments were duly adopted pursuant to state law. Today's letter addresses the Agency's review of the remaining revisions to Rules 62-4, 62-302 and 62-303.

As laid out in the enclosed decision document, titled *Decision Document of the United States Environmental Protection Agency Determination Under § 303(c) of the Clean Water Act Review of Florida's 2013 Triennial Review of Changes to Rules 62-4, 62-302 and 62-303*, the EPA is approving the new and revised water quality standards not previously addressed by the Agency's September 9, 2013, letter with the exception of the revision to subparagraph 62-4.242(3)(a)2. The revision to subparagraph 62-4.242(3)(a)2 was determined to be inconsistent with the requirements of 40 CFR Part 131 and the Clean Water Act (CWA) and, therefore, is disapproved. It is our understanding that FDEP will remove this provision during a future rulemaking on Rule 62-4.

In addition to the EPA's review pursuant to Section 303 of the CWA, Section 7(a)(2) of the Endangered Species Act (ESA) requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), to ensure that their actions are not likely to jeopardize the continued existence of federally listed species or result in the destruction or adverse modification of designated critical habitat of such species. Biological evaluations addressing the Agency's conclusions of effect were transmitted to the USFWS and NMFS offices by a letter dated May 7, 2014. The Region received concurrence with the EPA's conclusions of effect from the Panama City USFWS office in a letter dated May 19, 2014, and a combined concurrence from the Vero Beach and Jacksonville USFWS offices in a response dated June 30, 2014. The EPA's decision to approve the revisions contained in the enclosed decision document is subject to the results of consultation under Section 7 of the ESA with the NMFS office. The Agency will notify FDEP of the results of the Section 7 consultation upon completion of the action.

We would like to commend you and your staff for your continued efforts in environmental protection for the State of Florida. Should you have any questions regarding the EPA's action today, please contact me at (404) 562-8357 or have a member of your staff contact Ms. Lauren Petter, Florida Water Quality Standards Coordinator, at (404) 562-9272.

Sincerely,

for Heather McTeer Toney
Regional Administrator

Enclosure

cc: Mr. Matthew Z. Leopold, FDEP

Decision Document of the United States Environmental Protection Agency Determination Under § 303(c) of the Clean Water Act Review of Florida's 2013 Triennial Review of Changes to Rules 62-4, 62-302 and 62-303

In a letter dated July 16, 2013, from Matthew Z. Leopold, General Counsel for Florida Department of Environmental Protection (FDEP or the Department), to A. Stanley Meiburg, Acting Regional Administrator of the U.S. Environmental Protection Agency's Region 4 Office, FDEP submitted new and revised water quality standards (WQS) for review by the EPA pursuant to Section 303(c) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1313(c). In the July 16, 2013 letter, FDEP's General Counsel certified that the WQS revisions were duly adopted pursuant to Florida law. These new and revised WQS are set out primarily in Rule 62-302 of the Florida Administrative Code (F.A.C.) [Surface Water Quality Standards]. The State also submitted amendments to Rule 62-303, F.A.C. [Identification of Impaired Surface Waters], which establishes Florida's methodology for assessing whether waters are attaining state water quality standards and Rule 62-4, F.A.C [Permits], which, in part, sets out Florida's antidegradation implementation procedures. A subset of the revisions contained in the July 16, 2013, submittal was approved by the EPA on September 9, 2013. As discussed more fully below, where the EPA has determined that the remaining amendments to Rule 62-302, Rule 62-303 and Rule 62-4 are, themselves, new or revised WQS, the EPA has reviewed and approved those revisions pursuant to Section 303(c) of the CWA, 33 U.S.C. § 1313(c), with the exception of subparagraph 62-4.242(3)(a)2.[1] Since the EPA is disapproving the revision to subparagraph 62-4.242(3)(a)2., the EPA is recommending that the State remove the revision to subparagraph 62-4.242(3)(a)2. as part of a future rulemaking effort and understands that is the State's intention.

Section 303 of the Clean Water Act, 33 U.S.C. § 1313, requires states to establish water quality standards and to submit any revised or new standards to the EPA for approval or disapproval. The revisions addressed in this document were approved for adoption by the Florida Environmental Regulation Commission (ERC) at a public hearing on April 23, 2013, and received by the EPA on July 17, 2013.

EPA's Decision

Each of FDEP's water quality standards revisions is addressed in detail below along with the EPA's analyses and conclusions.

Revisions to Chapter 62-302[2]

Review of Non-substantive Revisions to Water Quality Standards

The EPA determined that changes within 62-302, such as the renumbering of the definitions and minor typographical changes to subsections 62-302.200(18), 62-302.400(8), 62-302.530, 62-302.530(20), 62-302.530(10)(b) [revisions to Class II and III marine columns] and

[1] EPA has provided FAQs on "What is a New or Revised Water Quality Standard Under CWA 303(c)(3)?" at http://water.epa.gov/scitech/swguidance/standards/cwa303faq.cfm. The link provides detailed information of such analysis.

[2] Unless otherwise stated, all rule and subsection citations are to provisions in the Florida Administrative Code.

62-302.530(41) and subparagraphs 62-302.400(16)(b)8. and 46. [as numbered in the submitted regulatory changes], were considered editorial, non-substantive changes to Florida's EPA-approved water quality standards. The EPA approves these editorial, non-substantive changes as being consistent with the CWA and the EPA's implementing regulations. The EPA notes, however, that its approvals of these editorial, non-substantive changes do not re-open the EPA's prior approvals of the underlying substantive water quality standards.

Review of Remaining Revisions

Section 62-302.200

Subsection 62-302.200(7) was revised and reads as follows:

> (7) "Compensation point for photosynthetic activity" shall mean the depth within the water column at which one percent of the ~~light intensity at the~~ surface Photosynthetically Active Radiation remains unabsorbed. The light intensities immediately below the surface ~~at the surface~~ and at depth ~~subsurface~~ shall be measured ~~simultaneously~~ by irradiance meters that measure the total irradiance of light between 400 and 700 nm ~~such as Kahlsico Underwater Irradiameter (Model No. 268 WA 310), or other device having a comparable spectral response~~.

See the EPA's analysis of and decision on this provision in the discussion of the revised transparency criterion located at subsection 62-302.530(67).

Subsections 62-302.200(29) and (30) were revised and read as follows:

> (29) "Predominantly fresh waters" shall mean surface waters in which the chloride concentration is less than 1,500 milligrams per liter or specific conductance is less than 4,580 µmhos/cm. Measurements for making this determination shall be taken within the bottom half of the water column.
>
> (30) "Predominantly marine waters" shall mean surface waters in which the chloride concentration is greater than or equal to 1,500 milligrams per liter or specific conductance is greater than or equal to 4,580 µmhos/cm. Measurements for making this determination shall be taken within the bottom half of the water column.

The intended objective of these definitions is to establish a clear distinction between freshwater and marine environments, which have significant differences in water chemistry and adapted aquatic life. In practice, the definitions function to determine application of appropriate criteria to a given waterbody to provide protection for the characteristic life. In the EPA's November 30, 2012, approval of the revisions to these same terms, the deletion of the text "at the surface" from the above definitions removed a qualifying restriction in the use of these definitions to distinguish between fresh and marine waters. The addition of the sentences identifying where measurements are to be taken for use in the determination of whether the waterbody is predominantly fresh or marine is reasonable, especially in systems where there can be layers of both fresh water and marine water. The EPA finds the current revisions will allow for more

appropriate application of fresh and marine criteria. Therefore, the State's revisions to what constitutes "predominantly fresh waters" and "predominantly marine waters" for the purposes of this rule are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

Section 62-302.400

Subsection 62-302.400(3) was revised and reads as follows:

> (3) The specific water quality criteria corresponding to each surface water classification are listed in Rules 62-302.500 through 62-302.540 and Rule 62-302.800 ~~62-302.530~~, F.A.C.

In the past, sections 62-302.500 and 62-302.530 represented the locations in the State's water quality standards regulations where specific criteria were located. This revision makes it clear that specific water quality criteria occur in additional places, including sections which have previously been adopted or were recently adopted, such as sections 62-302.531, 62-302.532, 62-302.533, 62-302.540 and 62-302.800. This provision ensures that the criteria in all of these sections will be used with the corresponding surface water classification, or designated use(s) for a given waterbody. This is consistent with 40 C.F.R. § 131.11 and the CWA, and is approved by the EPA pursuant to Section 303(c) of the Act.

Paragraph 62-302.400(15)(b) was revised and reads as follows:

> (15) Unless otherwise specified, the following shall apply:
> [(a) No change.]
> (b) Water quality classifications shall be interpreted to include associated water bodies such as tidal creeks, coves, bays and bayous. The boundaries of Class II waters shall be limited to "Predominantly Marine Waters" as defined in subsection 62-302.200(30), F.A.C.

As noted in the State's Overview of Triennial Review of State Surface Water Quality Standards Chapters 62-4, 62-302 and 62-303, Florida Administrative Code (hereinafter, FDEP's Overview Document), the proposed amendment was added to clarify that the Shellfish Propagation or Harvesting use is limited to marine waters as defined in subsection 62-302.200(30). Because there are no freshwater shellfish harvesting areas, this revision does not have the effect of changing any designated uses. Therefore, clarifying that the Class II designated use only applies to "predominantly marine waters" is consistent with existing practice and is an acceptable clarification for the State to make. This is consistent with 40 C.F.R. Part 131 and the CWA, and is approved by the EPA pursuant to Section 303(c) of the Act.

Section 62-302.500

Paragraphs 62-302.500(1)(d) and 62-302.530(50)(m) were revised and read as follows:

> (1) Minimum Criteria. All surface waters of the State shall at all places and at all times be free from:
> ...

(d) Lindane (g-benzene hexachloride) in concentrations above 0.16 micrograms/liter in predominantly marine waters or in concentrations above 0.95 micrograms/liter in predominantly fresh waters.

Parameter	Units	Class I	Class II	Class III and Class III-Limited (see Note 4)	
				Predominantly Fresh Waters	Predominantly Marine Waters
(50) (m) Lindane (g-benzene hexachloride)	Micrograms/L	See Minimum criteria in paragraph 62-302.500(1)(d), F.A.C. ~~≤ 0.019 annual avg.; 0.08 max~~	See Minimum criteria in paragraph 62-302.500(1)(d), F.A.C. ~~≤ 0.063 annual avg.; 0.16 max~~	See Minimum criteria in paragraph 62-302.500(1)(d), F.A.C. ~~≤ 0.063 annual avg.; 0.08 max~~	See Minimum criteria in paragraph 62-302.500(1)(d), F.A.C. ~~≤ 0.063 annual avg.; 0.16 max~~

The resulting revised acute criteria located at paragraph 62-302.500(1)(d) reflect the updated scientific information and the EPA's CWA Section 304(a) recommended guidance values published on the EPA's "National Recommended Water Quality Criteria" website http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm#notes for protection of aquatic life related to Lindane. Therefore, the State's revisions to paragraphs 62-302.500(1)(d) and 62-302.530(50)(m) are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

Section 62-302.530

Rule 62-302.530 consists of a table of specific water quality criteria that apply to Florida's surface waters and an introductory paragraph which was revised and reads as follows:

> The following table contains both numeric and narrative surface water quality criteria to be applied except within zones of mixing. The left-hand column of the Table is a list of constituents for which a surface water criterion exists. The headings for the water quality classifications are found at the top of the Table and the classification descriptions for the headings are specified in subsection 62-302.400(1), F.A.C. Applicable criteria lie within the Table. The individual criteria should be read in conjunction with other provisions in water quality standards, including Rule 62-302.500, F.A.C. The criteria contained in Rule 62-302.500, F.A.C., also apply to all waters unless alternative or more stringent criteria are specified in Rule 62-302.530, F.A.C. Unless otherwise stated, all criteria express the maximum not to be exceeded at any time except within established mixing zones or in accordance with site-specific effluent limitations developed pursuant to Rule 62-620.620, F.A.C. In some cases, there are separate or additional limits, which apply independently of the maximum not to be exceeded at any time. For example, the criteria for carcinogens, which are expressed as an annual average (denoted as "annual avg." in the Table), are applied as ~~means~~ the maximum allowable annual average concentration at the long-term harmonic mean flow ~~average annual flow conditions~~ (see subsection 62-302.200(2), F.A.C.). Numeric interpretations of the narrative nutrient criterion in paragraph 62-302.530 (47)(b), F.A.C., shall be expressed as spatial averages and applied over a spatial area consistent with their derivation. In applying the water quality

> standards, the Department shall take into account the variability occurring in nature and shall recognize the statistical variability inherent in sampling and testing procedures. The Department's assessment methodology, set forth in Chapter 62-303, F.A.C., accounts for such natural and statistical variability when used to assess ambient waters pursuant to Sections 305(b) and 303(d) of the Federal Clean Water Act.

Rule 62-302.530 was revised to include an exception to the frequency component of the criteria not to be exceeded at any time for situations "within established mixing zones or in accordance with site-specific effluent limitations developed pursuant to Rule 62-620.620, F.A.C." and to modify the description related to the flow conditions of specific criteria for carcinogens in the 62-302.530 table.

In regards to the mixing zone related revision, Section 5.1 of the EPA's Water Quality Standards Handbook (hereinafter, WQS Handbook) concludes that "[s]ometimes it is appropriate to allow for ambient concentrations above the criteria in small areas near outfalls." Furthermore, the WQS Handbook states:

> A mixing zone is an allocated impact zone where acute and chronic water quality criteria can be exceeded as long as a number of protections are maintained, including freedom from the following:
>
> - materials in concentrations that will cause acutely toxic conditions to aquatic life;
> - materials in concentrations that settle to form objectionable deposits;
> - floating debris, oil, scum and other material in concentrations that form nuisances;
> - substances in concentrations that produce objectionable color, odor, taste, or turbidity; and
> - substances in concentrations that produce undesirable aquatic life or result in a dominance of nuisance species.
>
> Acutely toxic conditions are defined as those lethal to aquatic organisms that may pass through the mixing zone. As discussed in section 5.1.2 [of the WQS Handbook], the underlying assumption for allowing a mixing zone is that a small area of concentrations in excess of acute and chronic criteria but below acutely toxic releases can exist without causing adverse effects to the overall water body. The State regulatory agency can decide to allow or deny a mixing zone on a site-specific basis. For a mixing zone to be permitted, the discharger should prove to the State regulatory agency that all State requirements for a mixing zone are met.

The WQS Handbook supports the use of mixing zones as part of the State's water quality standards and this revision further clarifies the State's existing policy to allow the use of mixing zones. Furthermore, as stated in 40 C.F.R. § 131.13, "States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. Such policies are subject to the EPA review and approval." Because 40 C.F.R. § 131.13 allows for the establishment of mixing zones, this revision is an appropriate addition to the State's water quality standards.

The phrase "in accordance with site-specific effluent limitations developed pursuant to Rule 62-620.620" was further described in a letter dated August 23, 2013, from Daryll Joyner, Program Administrator of FDEP's Water Quality Standards Program to Ms. Annie Godfrey, Chief of the EPA Region 4's Water Quality Standards Section (hereinafter, the August 2013 letter). In that letter, the State indicated that:

> While permit limits can be written to implement a mixing zone or existing administrative relief mechanisms, it should be emphasized that this reference to Rule 62-620.620, F.A.C., does not create any new administrative relief mechansims. In fact, Subsection 62-620.620(1), F.A.C., specifically states that permit conditions must be based on 'relevant statutory and regulatory provisions in effect prior to the final administrative disposition' of the permit. Furthermore, Paragraph 62-620.620(1)(g), F.A.C., requires that permits contain "any requirements in addition to or more stringent than applicable promulgated effluent limitations necessary to provide reasonable assurance that a discharge will not cause or contribute to violations of water quality standards."

Because 40 C.F.R. § 131.13 allows for policies generally affecting the application and implementation of state water quality standards, this is a reasonable addition to the State's water quality standards.

In regards to the revision from "average annual flow conditions" to "long-term harmonic mean flow," there are two documents that address this point: the WQS Handbook and the EPA's 1991 Technical Support Document for Water Quality-based Toxics Control (hereinafter, 1991 Toxics TSD). Page 3-4 of Section 3.1 of the WQS Handbook states, "water quality criteria for human health contain only a single expression of allowable magnitude; a criterion concentration generally to protect against long-term (chronic) health effects." In addition, page 88 of the 1991 Toxics TSD, states "[t]he long term harmonic mean flow is recommended as the design flow for carcinogens. The recommendation of long-term harmonic mean flow has been derived from the definition of the human health criteria for carcinogenic pollutants." Furthermore, "the harmonic mean is always less than the arithmetic mean" and therefore, the State's revision could result in a more stringent application than previously used. Both of these documents support the use of a long-term harmonic mean flow when considering the implementation of carcinogenic criteria.

For all the reasons outlined above, the revisions to the introductory paragraph to the 62-302.530 table are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

Section 62-302.530 Table

With regard to the changes within the section 62-302.530 table, the revisions included: changes to the bacteria criteria to address Membrane Filter (MF) and Most Probable Number (MPN) counts, changes to the types of samplers used for the Shannon-Weaver Diversity Index criteria, editorial changes to chronic toxicity criteria (see non-substantive discussion above), editorial changes to mercury criteria (see non-substantive discussion above), changes to the lindane criteria (changes to table are discussed in the EPA's review of changes to paragraph

62-302.500(1)(d)) and changes to the transparency criterion. Unless otherwise stated above, each revision to the table is addressed below.[3]

The Class II criteria in subsection 62-302.530(6) were revised and reads as follows:

> MPN or MF counts shall not exceed a median value of 14 with not more than 10% of the samples exceeding 43 (for MPN) or 31 (for MF), nor exceed 800 on any one day. To determine the percentage of samples exceeding the criteria when there are both MPN and MF samples for a waterbody, the percent shall be calculated as $100*(n_{mpn}+n_{mf})/N$, where n_{mpn} is the number of MPN samples greater than 43, n_{mf} is the number of MF samples greater than 31 and N is the total number of MPN and MF samples.

The revisions in the first sentence incorporate the membrane filter method and its associated value for shellfish harvesting areas. This method and criteria are consistent with the overarching regulatory guidelines for shellfish harvesting published by the U.S. Food and Drug Administration in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish: 2011 Revision. This revision represents a level of protection equivalent to the MPN method, is approved for use by the appropriate federal regulatory agency, and is based on sound science. Therefore, the revisions in the first sentence are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

The second sentence is a mathematical construct to make assessment determinations based on the presence of data using both analytic methods. Because this is an assessment methodology and does not modify the underlying water quality standard, the EPA has determined the second sentence of 62-302.530(6) is not a new or revised water quality standard.

Subsection 62-302.530(10) was revised and reads as follows:

Parameter	Units	Class I	Class II	Class III and Class III-Limited (see Note 4)	
				Predominantly Fresh Waters	Predominantly Marine Waters
(10) (a) Biological Health (Shannon-Weaver Diversity Index using Hester-Dendy type samplers) ~~Integrity~~	Per cent reduction of Shannon-Weaver Diversity Index	The Index for benthic macroinvertebrates shall not be reduced to less than 75% of background levels as measured using organisms retained by a U. S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m^2 area each,	~~The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U. S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm^2.~~	The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U. S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m^2 area each, incubated for a period of four weeks.	~~The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U. S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm^2.~~

[3] The Class IV and V columns were left off the excerpts shown from the 62-302.530 table since no specific revisions took place to the Class IV or V criteria for these parameters. This was merely done to simplify the excerpt and does not indicate a change to Class IV or V uses, nor to the associated criteria.

		incubated for a period of four weeks.			
(10) (b) Biological Health (Shannon-Weaver Diversity Index using Ekman or Ponar type samplers)	Per cent reduction of Shannon-Weaver Diversity Index	In lakes, the Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U. S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ekman or Ponar type samplers with minimum sampling area of 225 cm^2.	The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U. S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm^2.	In lakes, the Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U. S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ekman or Ponar type samplers with minimum sampling area of 225 cm^2.	The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U. S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm^2.

The State has updated the type of sampler that is to be used when assessing the biological health for the Shannon-Weaver Diversity Index in lakes. The State now specifies that in lakes, the Ekman or Ponar type of sampler is to be used instead of the Hester-Dendy type of sampler in the previously adopted, more generic Class I and III descriptions. The revisions in the columns for Class II and Class III Marine waters within subsection 62-302.530(10)(b) are non-substantive revisions and are addressed on pages 1-2 of this Decision Document. The Ekman and Ponar samplers are more appropriate samplers to be used in non-wadeable systems, such as a lake, because they provide better access to the benthic macroinvertebrates and provide a more appropriate method for collecting samples. The lake-related revisions to subsection 62-302.530(10) establish additional detail applicable to the biological assessment of waters. Therefore, the revisions to 62-302.530(10)(b) are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

Subsection 62-302.530(67) [Transparency] was revised as follows:

Parameter	Units	Class I	Class II	Class III and Class III-Limited (see Note 4)	
				Predominantly Fresh Waters	Predominantly Marine Waters
(67) Transparency	Depth of the compensation point within the water column for photosynthetic activity	The annual average value sShall not be reduced by more than 10% as compared to the natural background value. Annual average values shall be based on a minimum of three samples, with each sample collected at least three months apart.	The annual average value sShall not be reduced by more than 10% as compared to the natural background value. Annual average values shall be based on a minimum of three samples, with each sample collected at least three months apart.	The annual average value sShall not be reduced by more than 10% as compared to the natural background value. Annual average values shall be based on a minimum of three samples, with each sample collected at least three months apart.	The annual average value sShall not be reduced by more than 10% as compared to the natural background value. Annual average values shall be based on a minimum of three samples, with each sample collected at least three months apart.

The transparency-related revisions, including revisions to subsection 62-302.200(7), which address the addition of phrases "within the water column," "immediately below the surface," and

"at depth" clarify the measurements will be restricted to depth within the water column. The need to clarify that measurements should take place within the water column was addressed in FDEP's response to comments. In a response to a comment on the transparency criterion revisions suggesting transparency was revised to "accommodate the algae and degradation that will continue to worsen as a result of Florida's new lax nutrient criteria," FDEP, in its Responsiveness Summary: Response to Public Comments (Responsiveness Document) stated:

> The transparency criterion was revised to assure that depth of the compensation point for photosynthetic activity is measured within the water column (not below the sediment) and that natural variability in transparency was better accounted for by expressing the criteria as an annual average and requiring a minimum of three measurements per year.
>
> The Department strongly disagrees with the characterization of the adopted NNC and is confident that any anthropogenic eutrophic conditions will be addressed independent of the transparency criterion.

Additionally, in the August 2013 letter, the State clarified that the revisions are intended to "ensure the criterion applied where aquatic plants actually grow and photosynthesize (in the water rather than below the sediment where plants have no leaves). Furthermore, if the compensation depth is greater than the depth of the water, then there is, by definition, adequate light for aquatic plant growth (phytoplankton or submerged aquatic vegetation), regardless of whether the compensation depth was decreased."

Because the revisions clarify the implementation of the definition contained at 62-302.200(7), these revisions represent a reasonable approach to measuring transparency in Florida's waters.

In subsection 62-302.200(7), the term "Photosynthetically Active Radiation (PAR)" was also included to reflect the newer method for measuring transparency and the specific wavelengths given correspond to the wavelengths available to photosynthetic organisms for photosynthesis. The August 2013 letter further clarified that, because the reasoning for the revision is tied to photosynthesis, PAR was added to "ensure the wavelengths of light that plants actually utilize to photosynthesize (400-700 nm) were actually measured." Measuring PAR associated with the listed wavelengths represents a defensible method for measuring light necessary to implement the transparency criterion.

In the revisions to subsection 62-302.530(67), the State has added "within the water column" to be consistent with the revised definition of "compensation point for photosynthetic activity." The State also modified the criterion to be applied as "annual average values" not to be reduced by more than 10% instead of the previous criterion which had an unspecified duration not to be reduced by more than 10%. The addition of the phrase "Annual average values shall be based on a minimum of three samples, with each sample collected at least three months apart" for Class I, II and III waters, was determined not to be a new or revised water quality standard because it is related to data sufficiency requirements and does not establish or revise the magnitude, duration or frequency of the revised criteria.

As indicated in the State's August 2013 letter, the revisions related to annual averages are based on the development of more recent scientific information which addresses the frequency, magnitude and duration components of the transparency criterion. The State's analysis of the Technical Support Document for the EPA's Proposed Rule for Numeric Nutrient Criteria for Florida Estuaries, Coastal Waters and South Florida Inland Flowing Waters (hereinafter, the EPA (2012)) provided additional information regarding the protection of seagrasses. Specifically, the "Department notes that the EPA (2012) provided evidence that the average transparency, as calculated on an annual basis, was the appropriate duration expression to maintain seagrass photosynthesis and therefore, to assure seagrass protection. Because the EPA (2012) used annual average achievement of transparency target as a protective method to develop NNC, the Department included an annual duration expression to ensure the updated transparency criterion was fully protective." With regard to the use of annual average values, such a duration is reasonable for implementing a transparency criterion for all of the reasons cited above.

Therefore, the revisions to 62-302.200(7) and 62-302.530(67) are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

Overview of Revisions to the Impaired Waters Rule, Chapter 62-303

Chapter 62-303, F.A.C., titled Identification of Impaired Surface Waters (Impaired Waters Rule or IWR), establishes a methodology for FDEP to identify waterbodies for inclusion on the list of water quality-limited segments requiring total maximum daily loads (TMDLs) pursuant to Section 303(d) of the Act and 40 C.F.R. Part 130. The EPA previously reviewed and approved or disapproved new or revised WQS within the IWR in 2005,[4] 2008[5] and again in 2012,[6] after Florida revised the rule to make substantive and editorial changes to the IWR. In its review and approval of the new or revised WQS portions of the 2013 amended IWR (amended IWR), the EPA applied the same analytical framework that it used in the 2005, 2008 and 2012 Determinations.[7]

---

[4] "Determination on Referral Regarding Florida Administrative Code Chapter 62-303 Identification of Impaired Surface Waters," United States Environmental Protection Agency, July 7, 2005.

[5] "Determination Upon Review of Amended Florida Administrative Code Chapter 62-303 Identification of Impaired Surface Waters," **Error! Main Document Only.**United States Environmental Protection Agency, February 19, 2008.

[6] "Decision Document of United States Environmental Protection Agency Determination Under § 303(c) of the Clean Water Act Review of Amendments to Florida's Rule 62-302 and 62-303," United States Environmental Protection Agency, November 30, 2012.

[7] See also EPA answers to frequently asked questions (FAQs) on "What is a New or Revised Water Quality Standard Under CWA 303(c)(3)?" at http://water.epa.gov/scitech/swguidance/standards/cwa303faq.cfm. The link provides detailed information of such analysis.

For the reasons discussed below, the EPA has concluded that several portions of the amended IWR are new or revised water quality standards, but also has concluded that many portions of the amended IWR are not new or revised water quality standards. Specifically, those provisions of the IWR relating to magnitude, duration and frequency of load or concentration exceedances that define or revise the "ambient condition" or "level of protection" that the State affords waters for purposes of making attainment decisions constitute new or revised water quality standards. An attainment decision is one where a State decides what it means to attain or to not attain any "water quality standard applicable to such waters" for purposes of establishing TMDLs under Section 303(d)(1)(A) of the Act, 33 U.S.C. §1313(d)(1)(A). TMDLs, in turn, serve as the basis for NPDES permit limitations. Provisions that affect attainment decisions made by the State and that define, change, or establish the level of protection to be applied in those attainment decisions have the effect of revising existing standards under Section 303(c) of the Act. These provisions constitute new or revised water quality standards subject to the EPA review pursuant to the Act. Conversely, provisions that merely describe the sufficiency or reliability of information necessary for the State to make an attainment decision and do not change a level of protection, are not WQS but are rather methodologies under Section 303(d) of the Act. See 40 C.F.R. § 130.7(b)(6). While these provisions are not reviewed by the EPA as new or revised water quality standards, they are considered by the EPA in reviewing lists of impaired waters submitted by the State pursuant to Section 303(d) of the CWA.

The EPA has determined that provisions of the amended IWR that affect only the State's decision to include a waterbody on the planning list do not constitute new or revised water quality standards, because placing a water on the planning list does not affect an attainment decision. To the extent that a planning list provision also affects the State's decision to identify a waterbody on the study or verified lists, however, that provision does affect an attainment decision. The EPA considered such provisions further to determine whether the provision also defined, changed, or established the level of protection to be applied in those attainment decisions.

Pursuant to Section 303(c) of the CWA, as set forth more fully below, the EPA has reviewed and is approving those portions of the amended IWR that the Agency has determined to be new or revised water quality standards.

Revisions to Chapter 62-303

Review of Non-substantive Revisions to Water Quality Standards

The EPA determined that changes within 62-303, such as the renumbering of the definitions and minor typographical changes to sections and subsections 62-303.320 and 62-303.320(4) [as numbered in the submitted regulatory changes], were editorial, non-substantive changes to Florida's EPA-approved water quality standards. The EPA approves these editorial, non-substantive changes as being consistent with the CWA and the EPA's implementing regulations. The EPA notes, however, that its approvals of these editorial, non-substantive changes do not re-open the EPA's prior approvals of the underlying substantive water quality standards.

Review of Remaining Revisions

Section 62-303.300

Subsection 62-303.300(2) was deleted and no longer states " ~~(2) Waters on the list of water segments submitted to EPA in 1998 that do not meet the data sufficiency requirements for the planning list shall nevertheless be included in the state's initial planning list developed pursuant to this rule."~~

In the EPA's July 6, 2005 review of 62-303.300, the EPA concluded, in part, that the section establishes the methodology for developing planning lists of waters that may be potentially impaired. This provision did not, in and of itself, establish a level of protection related to the magnitude, duration or frequency of water quality criteria that was then utilized to make an attainment decision to identify water quality limited segments nor did it establish a designated use. The EPA determined the provision to not be a new or revised water quality standard. Therefore, because the revisions do not establish a level of protection related to the magnitude, duration or frequency of water quality criteria that is then utilized to make an attainment decision to identify water quality limited segments and does not establish a designated use, the EPA has concluded that the revisions to IWR subsection 62-303.300(2) do not constitute new or revised water quality standards.

Section 62-303.320

Subsection 62-303.320(7) was revised and reads as follows:

> (7) ~~(6)~~ Notwithstanding the requirements of subsection (4), water segments shall be included on the planning list if:
> (a) There are less than ten samples for the segment, but there are three or more temporally independent samples that do not meet an applicable water quality criterion, or
> (b) More than one sample do not meet an acute toxicity-based water quality criterion listed in subsection ~~Rule~~ 62-302.500(1) ~~62-302.530~~, F.A.C., or a water quality criterion for a synthetic organic compound or synthetic pesticide in any three year period.

Although, this provision is located within the planning list section of the regulations, the EPA previously determined in its February 19, 2008, action that paragraph 62-303.320(7)(b) was a new or revised water quality standard because the "provision changes or further defines the frequency of several of Florida's currently approved criteria from a maximum value not to be exceeded and replaces it with a more than one in any three year period exceedance rate for assessment and listing purposes." The change the State has made, an editorial modification to clarify the appropriate reference for acute toxicity-based criteria, is consistent with the original intent of this provision. The clarification to correct the rule citation contained in paragraph 62-303.320(7)(b) is consistent with 40 C.F.R. Part 131 and the CWA, and is therefore approved by the EPA pursuant to Section 303(c) of the Act.

The EPA notes that, although the revisions to the lindane criteria are based on aquatic life protection, the adopted values are more stringent than the currently recommended human health

based lindane values. The EPA expects the State will continue to ensure that the lindane criteria are assessed to ensure protection of both human health and aquatic life designated uses, including any instances where the language in 62-303 may not specifically address lindane and human health based designated uses.

Section 62-303.360

Subsection 62-303.360(1) was revised and reads as follows:

> (1) A Class I, II, or III water shall be placed on the planning list for evaluating primary contact and recreation use support if:
> (a) There is a sufficient number of samples from the water segment that do not meet the applicable water quality criteria for bacteriological quality based on the methodology described in Rule 62-303.320, F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as individual ~~daily~~ samples, or

In the EPA's February 19, 2008 decision, the EPA concluded that this provision was not a new or revised water quality standard. The revision that has been made does not change the EPA's conclusion that the subsection is not a new or revised water quality standard.

Section 62-303.370

Subsection 62-303.370(1) was revised and reads as follows:

> A Class I, II, or III water shall be placed on the planning list for fish and shellfish consumption if:
> (1) There is a sufficient number of samples from the water segment that do not meet the applicable Class II water quality criteria for bacteriological quality based on the methodology described in Rule 62-303.320, F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as individual ~~daily~~ samples, or

In the EPA's February 19, 2008 decision, the EPA concluded that this provision was not a new or revised water quality standard. The revision that has been made does not change the EPA's conclusion that the subsection is not a new or revised water quality standard.

Section 62-303.380

Subsection 62-303.380(1) was revised and reads as follows:

> (1) A Class I water shall be placed on the planning list for potential impairment of drinking water use support and the protection of human health if:
> (a) There is a sufficient number of samples from the water segment that do not meet the applicable Class I water quality criteria for bacteriological quality based on the methodology described in Rule 62-303.320, F.A.C., with the exception that paragraph 62-303.320(4)(a),

F.A.C., does not apply and samples collected on different days within any four day period will be assessed as individual ~~daily~~ samples, or
[(b) through (c) No change.]
[(2) through (4) No change.]

In the EPA's February 19, 2008 decision, the EPA concluded that this provision was not a new or revised water quality standard. The revisions that have been made do not change the EPA's conclusion that the subsection is not a new or revised water quality standard.

Section 62-303.460

Subsection 62-303.460(3) was revised and reads as follows:

(3) Water segments shall be included on the verified list if:
(a) The number of samples that do not meet the applicable single-sample bacteriological water quality criteria meet the requirements in subsection 62-303.420(6), F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as individual ~~daily~~ samples, or
[(b) No change.]

In the EPA's February 19, 2008 decision, the EPA concluded that this provision was not a new or revised water quality standard. The revision that has been made does not change the EPA's conclusion that the subsection is not a new or revised water quality standard.

Section 62-303.470

Subsection 62-303.470(3) was revised and reads as follows:

(3) Class II waters shall be included on the verified list for coliform impairment if, following review of the available data as described in subsection 62-303.460(2), F.A.C.
(a) The number of samples above 43 counts per 100 ml meet the requirement in subsection 62-303.420(6), F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as individual ~~daily~~ samples, or
[(b) No change.]

In the EPA's February 19, 2008 decision, the EPA concluded that this provision was not a new or revised water quality standard. The revision that has been made does not change the EPA's conclusion that the paragraph is not a new or revised water quality standard.

Section 62-303.480

Section 62-303.480 was revised and reads as follows:

If the water segment was listed on the planning list due to exceedances of a human health-based water quality criterion ~~and there were insufficient data from the last five years~~

~~preceding the planning list assessment to meet the data sufficiency requirements of subsection 62-303.320(4), F.A.C., additional data will be collected as needed to meet the requirements. Once these additional data are collected~~, the Department shall re-evaluate the ~~data~~ using the methodology in subsections 62-303.380(1) and (3) ~~(2)~~, F.A.C. and limit the analysis to data collected within 7.5 years of the time the water segment is proposed for listing on the verified list. ~~during the five years preceding the planning list assessment, the additional data collected pursuant to this paragraph (not to include data older than 7.5 years), and~~ Ddata older than 7.5 years shall be used if it is demonstrated to be representative of current conditions. Any determinations to use older data shall be documented by the Department and the documentation shall provide the basis for the decision that the data are representative of current conditions. For this analysis, the Department shall exclude any data meeting the requirements of subsection 62-303.420(5), F.A.C. The following water segments shall be listed on the verified list:

[(1) through (2) No change.]

(3) For bacteriological water quality criteria, water segments shall be included on the verified list if, following review of the available data as described in subsections 62-303.460(2) and (5), F.A.C.:

(a) The number of samples that do not meet the applicable single-sample bacteriological water quality criteria meet the requirements in subsection 62-303.420(6), F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as individual ~~daily~~ samples, or

[(b) No change.]

In the EPA's February 19, 2008 decision, the EPA concluded that this provision was not a new or revised water quality standard. The revisions that have been made do not change the EPA's conclusion that the section is not a new or revised water quality standard.

Section 62-303.500

Subsection 62-303.500(3) was revised and reads as follows:

[(1) through (2) No change.]

(3) The following waters shall be designated low priority:

(a) ~~Water segments that are listed before 2010 due to fish consumption advisories for mercury (due to the current insufficient understanding of mercury cycling in the environment).~~

~~(b)~~ Man-made canals, urban drainage ditches, and other artificial water segments unless the impairment poses a threat to potable water supplies or to human health ~~that are listed only due to exceedances of the dissolved oxygen criteria~~.

[(c) renumbered (b) No change.]

In the EPA's July 6, 2005 review of 62-303.500, the EPA concluded, in part, that the section defines what facts FDEP shall take into consideration to prioritize impaired water body segments for subsequent TMDL development. Prioritization is required by 40 C.F.R. § 130.7(b)(4) which implements Section 303(d) of the CWA and does not relate to the implementation of CWA Section 303(c) or the regulations at 40 C.F.R. Part 131 and was determined to not be new or

revised water quality standards. Therefore, because the revisions do not establish a level of protection related to the magnitude, duration or frequency of water quality criteria that is then utilized to make an attainment decision to identify water quality limited segments nor does it establish a designated use, the EPA has concluded that the revisions to IWR subsection 62-303.500(3) do not constitute new or revised water quality standards.

Section 62-303.720

Paragraphs 62-303.720(2)(b) and (f) were revised and read as follows:

> (2) Waterbody segments shall be removed from the State's verified list only after adoption of a TMDL, a Department determination that pollution control programs provide reasonable assurance that water quality standards will be attained pursuant to Rule 62-303.600 F.A.C., or upon demonstration that the waterbody meets the waterbody quality standard that was previously established as not being met.
> [(a) No change.]
> (b) For waters listed due to failure to meet aquatic life use support based on biological data pursuant to Rule 62-303.430, F.A.C., the waterbody shall be delisted when ~~the~~ two ~~most recent~~ independent follow-up Biological Health Assessments have been conducted and the waterbody no longer qualifies for the planning list pursuant to subsection 62-303.330(3), F.A.C. ~~indicate the waterbody is no longer impaired pursuant to subsection 62-303.430(2), F.A.C~~. The follow-up tests must meet the following requirements:
> ...
> (f) For waters listed based on impacts to potable water supplies pursuant to paragraph 62-303.380(1)(b), the water shall be delisted ~~when applicable water quality criteria are met as defined in paragraph 62-303.380(1)(a), F.A.C., and~~ when the causes resulting in higher treatment costs have been ameliorated.

The revision changed the process that the State may use to remove waters from the verified list and utilize biological assessment criteria contained in 62-303.430 and 62-303.330(3) to make delisting decisions for previous non-attainment decisions that identified water quality limited segments. The requirements that the two follow up Biological Health Assessments indicate the waterbody is no longer impaired, as well as requiring that the waterbody no longer qualifies for the planning list, are reasonable and protective provisions for removing a water from the verified list. Therefore, the revisions to 62-303.720(2)(b) are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

In the EPA's February 19, 2008 decision, the EPA concluded that 62-303.720(2)(f) was not a new or revised water quality standard. The revisions that have been made do not change the EPA's conclusion that the section is not a new or revised water quality standard.

Revisions to Chapter 62-4

Section 62-4.242

Subparagraph 62-4.242(2)(b)2. was revised and reads as follows:

(2) Standards Applying to Outstanding Florida Waters.
[(a) No change.]
(b) The Department recognizes that it may be necessary to permit limited activities or discharges in Outstanding Florida Waters to allow for or enhance public use or to maintain facilities that existed prior to the effective date of the Outstanding Florida Water designation, or facilities permitted after adoption of the Outstanding Florida Water designation. However, such activities or discharges will only be permitted if:
1. The discharge or activity is in compliance with the provisions specified in subparagraph (2)(a)2. of this section; or
2. For dredging beach-quality sand from inlets and related channels, or restoration/nourishment of beaches and the use of offshore borrow areas, the applicant demonstrates that:
a. Turbidity has been minimized for both magnitude and duration to the maximum extent practicable;
b. Turbidity at the edge of the approved mixing zone does not exceed natural background levels by more than the range in natural background turbidity levels measured throughout a normal tidal cycle for the applicable sand dredging or beach restoration/nourishment site; and in no case shall it exceed 29 NTUs above natural background; and
c. Turbidity levels, both inside and outside of the mixing zone, are not expected to have an adverse impact on marine resources, recreational value or public safety; or
3. ~~2.~~ Management practices and suitable technology approved by the Department are implemented for all stationary installations including those created for drainage, flood control, or by dredging or filling; and ~~3.~~ t~~T~~here is no alternative to the proposed activity, including the alternative of not undertaking any change, except at an unreasonably higher cost.
[(c) through (f) No change.]

The EPA's review of subparagraphs 62-4.242(2)(b)2. and 3. will first address the allowance of dredging and beach nourishment projects (subparagraph 62-4.242(2)(b)2.), followed by the review of the necessary demonstrations (sub-subparagraphs a. through c.) and old subparagraph 62-4.242(2)(b)2. (now subparagraph 3.).

Subparagraph 62-4.242(2)(b)2.

The revision to subparagraph 62-4.242(2)(b)2. allows an additional circumstance where lowering of water quality in an Outstanding Florida Water (OFW) can be allowed, even though that lowering may not be temporary as provided for in paragraph 62-4.242(2)(a). Prior to the current revision, the only exceptions allowed to paragraph 62-4.242(2)(a)2.b were those set forth in the previously approved subparagraph 62-4.242(2)(b)1., subparagraph 62-4.242(2)(b)2., or subparagraph 62-4.242(2)(b)3. With the addition of newly numbered subparagraph (2)(b)2, the

State is adding an additional provision to address how discharges and activities related to beach nourishment projects in OFWs will be permitted. This provision is an additional exception to the no lowering requirement in subparagraph 62-4.242(2)(a)2.b. and removes the need to grant variances for these projects. Rather, the State will permit such projects pursuant to its antidegradation review process applicable to OFWs. Further, the State has specified its expectations related to mixing zones and turbidity levels associated with these projects. The added wording allows for consideration of natural fluctuations in background turbidity levels in tidally influenced waters. These details are included in the revisions to both the antidegradation and mixing zone requirements and will be discussed within the corresponding parts of the regulation in which they are found. The EPA's analysis will focus on whether the added provisions are consistent with the level of antidegradation analysis required for these high quality waters.

Section 4.5 of the WQS Handbook provides the following guidance related to the decision to allow lowering of water quality in a high quality water, such as an OFW:

> In "high-quality waters," under [40 C.F.R. §] 131.12(a)(2), before any lowering of water quality occurs, there must be an antidegradation review consisting of:
>
> - **a finding that it is necessary to accommodate important economic or social development** (emphasis added) in the area in which the waters are located (This phrase is intended to convey a general concept regarding what level of social and economic development could be used to justify a change in high-quality waters.);
> - **full satisfaction of all intergovernmental coordination and public participation provisions** (emphasis added) (The intent here is to ensure that no activity that will cause water quality to decline in existing high-quality waters is undertaken without adequate public review and intergovernmental coordination.); and
> - assurance that the highest statutory and regulatory requirements for point sources, including new source performance standards **and best management practices for nonpoint source pollutant controls are achieved** (emphasis added) (This requirement ensures that the limited provision for lowering water quality of high-quality waters down to "fishable/swimmable" levels will not be used to undercut the Clean Water Act requirements for point source and nonpoint source pollution control; furthermore, by ensuring compliance with such statutory and regulatory controls, there is less chance that a lowering of water quality will be sought to accommodate new economic and social development).
>
> In addition, water quality may not be lowered to less than the level necessary to fully protect the "fishable/swimmable" uses and other existing uses. **This provision is intended to provide relief only in a few extraordinary circumstances where the economic and social need for the activity clearly outweighs the benefit of maintaining water quality above that required for "fishable/swimmable" water, and both cannot be achieved.** The burden of demonstration on the individual proposing such activity will be very high. In any case, moreover, **the existing use must be maintained and the activity shall not preclude the maintenance of a "fishable/swimmable" level of water quality protection.** (emphasis added)

With regard to the State's antidegradation policy, FDEP's regulations at subsection 62-302.700 provide that, "[n]o degradation of water quality, other than that allowed in Rule 62-4.242(2) and (3), F.A.C., is to be permitted in Outstanding Florida Waters and Outstanding National Resource Waters." Subsection 62-4.242(2)(a) provides that in most circumstances, there will be no lowering of water quality in OFWs, except on a temporary basis. See sub-subparagraph 62-4.242(2)(a)2.a. Subsection 62-4.242(2)(b) sets out the exceptions to this general provision, to allow for limited activities or discharges in OFWs "to allow for or enhance public use". The revision to subparagraph 62-4.242(2)(b)2. adds beach restoration activities as a type of activity that enhances public use of OFWs. The State provided the EPA with a copy of Section 161.088, F. S., which declares that beach restoration and nourishment projects are a "necessary governmental responsibility" and "in the public interest." In response to a follow up conversation with the State on April 10, 2014, the State provided an email on April 11, 2014, clarifying that the Engineering, Hydrology and Geology program in the Division of Water Resource Management makes the critically eroded determinations described in the statute, and updates the list of critically eroded beaches periodically. The April 11, 2014 email, also clarified that "Section 161.088 adds to the public interest determination, but it isn't the actual public interest test. The regulatory and proprietary rules and statutes list the criteria that are used for the Public Interest Test." The newly added language is consistent with the EPA's high quality waters requirements based on the documentation provided by the State. The State will decide which OFW provision applies to a given situation based on the conclusion of whether or not a given project is temporary. Where a project will result in more than a temporary lowering, the State will have to fulfill the additional requirements included in the newly added language in order to be able to permit the project.

To better understand the way in which FDEP considers beach projects, the EPA requested additional information as to how these revisions will be implemented. The Department has provided an example, discussed in more detail in the following section, of how a permit applicant will document the effects, examine compliance on a frequent basis, as well as provide feedback by which the impact should be minimized both temporally and spatially.

The specifics of the State's antidegradation requirements for permitting beach projects, laid out in part in 62-4.242(2)(b)2.a., b., and c. ("three demonstrations"), are further explained below.

Sub-subparagraphs 62-4.242(2)(b)2.a., b., and c.

The following excerpt from a January 22, 2014, email provided by Eric Shaw, FDEP, provides a good overview of beach nourishment projects. This summary provides a better understanding of the monitoring requirements and demonstrations that must be made in order to permit each of the dredging and beach nourishment projects.

> For most beach nourishment projects, sand is dredged from an offshore borrow site and a sand-water slurry is pumped onto the beach. Most of the sand settles out on the beach, and the water flows back into the ocean. The finer particles generally stay in suspension longer, so the return water is turbid. Since these beach projects are on the Atlantic Ocean or the Gulf of Mexico, the return water flows into the surf zone, where the turbulence

> from the waves inhibits settlement of suspended sediment from the water column. The long-shore current then quickly moves the turbidity plume down the beach.
> ...
> Prior to this rule change, which also includes resource protection measures for implementation, applicants for beach projects routinely applied for variances to the mixing zone rule. As stated above, most beach projects have been unable to meet the turbidity standard within 150 meters. However, for a number of years, whenever an expanded mixing zone was approved, the Department required turbidity monitoring at various distances within the mixing zone. The monitoring data confirmed the applicant's contention that turbidity could not regularly meet the standard at 150 meters, but they also showed that the requested size was not always correct. So now, for most projects, past monitoring data is available to establish the minimum size necessary for a turbidity mixing zone.

On February 5, 2014, the EPA had a conference call with FDEP to better understand the specific details, such as monitoring and reporting, related to the dredging and beach nourishment permitting process. FDEP staff also explained to the EPA staff that, as a matter of practice, variances to the 150 meter mixing zone were routinely granted by FDEP. FDEP also clarified that the intent of the new provisions was to establish upfront expectations of what FDEP considered a reasonably-sized extended mixing zone that is further tailored to site-specific conditions. In addition, FDEP intends that the new provisions will deter applicants from requesting a mixing zone that is too large and without sufficient basis. Marty Seeling, FDEP, followed up by email providing Appendix D – Project Specific Monitoring and Protection Conditions (Appendix D) and Appendix D-1 – Sediment Quality Control/Quality Assurance Plan (Appendix D-1) for the Town of Palm Beach on February 11, 2014. Pages D-29 through D-38 of Appendix D generally address turbidity monitoring and reporting requirements for all nourishment projects and earlier pages also include additional conditions, primarily related to protections for threatened and endangered species, such as the sea turtles (including nesting), nesting sea birds, shore birds, beach mouse, manatee and smalltooth sawfish. Appendix D-1 provides details on use of an offshore borrow area and the type of sediment to be used. Below are several excerpts from that document, along with the EPA's review of how the excerpts support the conclusion that the three demonstrations are scientifically reasonable for the State's antidegradation implementation methods in OFWs and, in the case of sub-subparagraph a., is comparable to an alternatives analysis intended to result in a less degrading alternative.

Sub-subparagraph a. provides that the applicant must demonstrate "[t]urbidity has been minimized for both magnitude and duration to the maximum extent practicable." In both Mr. Shaw's January 22, 2014 email, and Appendices D and D-1, there is documentation regarding the practices for minimizing both the magnitude and duration of the elevated turbidity:

> In order to minimize the amount of turbidity in the return water, the Department reviews the borrow material to ensure that it contains a low percentage of fines (silts and clays). Then when the material is pumped onto the beach, best management practices (BMPs) are employed to further reduce turbidity. The BMPs include construction of a temporary sand dike along the shoreline to prevent the water from flowing directly into the ocean.

This forces the return water to flow along the beach, which allows more of the suspended sediment to settle out on the beach before it enters the ocean. (January 22, 2014 email).

Intermediate Monitoring (required when using a mixing zone that exceeds 150 meters size). At surface, mid-depth and (for sites greater than 25 feet) 2 meters from the bottom, at points approximately 150 meters, 250 meters, 500 meters and 750 meters down-current from the point where the return water from the dredged discharge reenters the Atlantic Ocean. These measurements will be used to calibrate the size of the mixing zone for future events. (Page D-31 of Appendix D).

If monitoring reveals turbidity levels at the compliance sites that are greater than 29 NTUs (underlying water quality standard for turbidity) above the corresponding background turbidity levels, construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. (Page D-33 of Appendix D).

The data shall be presented in tabular format, indicating the measured turbidity levels at the compliance sites for each depth, the corresponding background levels at each depth and the number of NTUs over background at each depth. Any exceedances of the turbidity standard (29 NTUs above background) shall be highlighted in the table (Pages D-34 and 35 of Appendix D).

The pipeline discharge location shall be set back a minimum of 50 feet from open water, or at a landward edge of the beach berm, whichever is less. (Page D-34 of Appendix D).

[F]ill material compliance specifications for the sediment from the borrow area(s) proposed for this project are provided in Table 1. (Page D-40 of Appendix D-1).

As noted in the documentation from FDEP, it is clear that extensive monitoring exists, both spatially and temporally, to characterize the natural background and the compliance locations. Furthermore, in the event of meeting certain thresholds the project is stopped to prevent any further noncompliance, which further minimizes any possible negative impact on the water quality. Through the use of BMPs, such as sand dikes, set backs from the open water, the minimization of fine particles in the borrow sand and a backstop which requires real-time monitoring so that compliance issues can immediately be noted and rectified, the State has a process, as noted in the example provided, which can make the demonstration required by sub-subparagraph a. The EPA finds the State to have sufficiently documented the expectation associated with this specific provision.

Sub-subparagraph b. provides that the applicant must demonstrate "[t]urbidity at the edge of the approved mixing zone does not exceed natural background levels by more than the range in natural background turbidity levels measured throughout a normal tidal cycle for the applicable sand dredging or beach restoration/nourishment site; and in no case shall it exceed 29 NTUs above natural background."

Historically, paragraph 62-4.242(2)(a) was interpreted as indicating that turbidity in OFWs shall not exceed zero NTUs above background at the edge of the mixing zone.[8] The newly revised sub-subparagraph 62-4.242(2)(b)2.b. indicates that during dredging and beach nourishment projects turbidity should not exceed natural background levels by more than the range in natural background levels measured throughout a normal tidal cycle. In FDEP's experience, and as noted in slide 8 of FDEP's public workshop turbidity PowerPoint, "turbidity levels naturally fluctuate throughout the tidal cycle" and "turbidity level at the compliance site would exceed turbidity at the background site half the time." Furthermore, FDEP believes the range should never be more than 29 NTUs above background (the applicable criterion). This level is included as a shall-not-exceed level in the newly revised subparagraph. Page 1 of FDEP's Overview Document provides the following discussion which further explains the revision to include an allowance of a range in turbidity, without allowing degradation to OFWs, identified in subparagraph 62-4.242(2)(b)2.:

> The Department proposes to amend Rule 62-4.242, F.A.C., to revise the antidegradation threshold for turbidity in Outstanding Florida Waters for beach nourishment projects. This rule amendment allows the Department to take into account natural fluctuations in background turbidity levels during the construction of beach nourishment or inlet dredging projects within Outstanding Florida Waters. Due to the natural fluctuations of background turbidity levels in tidally influenced waters, and the method used to monitor for turbidity, it has been impossible to comply with the antidegradation requirement for turbidity in coastal waters. Therefore, nearly all such projects have required a variance to the antidegradation rule. Revising the rule to account for the natural fluctuations in turbidity throughout the tidal cycle would avoid the need to routinely process variances to the existing rule. The proposed antidegradation amendments should reduce costs to applicants who would otherwise be required to obtain a variance, while still protecting the natural marine resources in the affected area.

Pages D-29 through 32 of Appendix D provide the details, along with example diagrams depicting the plume shape, mixing zone polygon and compliance locations, for monitoring turbidity on a frequent temporal and spatial basis (three times per day, at least four hours apart, at three different depths). The background and compliance stations are also defined and are descriptive enough to make it clear that the background location is clear of all project related turbidity influences and the compliance location is at the "densest portion of any visible turbidity." In addition, when hardbottom resources are present within 1000 meters down-current of the turbidity source, monitoring is conducted once per day or when the mixing zone exceeds the 150 meter size and additional sampling occurs at intermediate locations of 150 meters, 250 meters, 500 meters and 750 meters to ensure a complete picture of the size and location of the turbidity plume. The descriptions provided in Appendix D, along with the excerpts included in sub-subparagraph a., provide an adequate sampling protocol to ensure a representative record of

[8] Subparagraph 62-4.242(2)(a)2.b. provides that "The existing ambient water quality within OFWs will not be lowered as a result of the proposed activity or discharge, except on a temporary basis during construction for a period not to exceed thirty days; lowered water quality would occur within a restricted mixing zone approved by the Department; and, water quality criteria would not be violated outside the restricted mixing zone. The Department may allow an extension of the thirty day time limit on construction-caused degradation for a period demonstrated by the applicant to be unavoidable and where suitable management practices and technology approved by the Department are employed to minimize any degradation of water quality.

the turbidity levels and also satisfy the requirements of this second required demonstration (sub-subparagraph b.).

Sub-subparagraph c. provides that the permit applicant must demonstrate "[t]urbidity levels, both inside and outside of the mixing zone, are not expected to have an adverse impact on marine resources, recreational value or public safety." In addition to the demonstrations illustrated in FDEP's documentation for sub-subparagraphs a. and b., which act in combination with this specific demonstration, the EPA reviewed the documentation to identify excerpts that were useful to understand how an adverse impact on marine resources, recreational value or public safety is assessed.

As noted in the Mr. Shaw's January 22, 2014 email, "[a]lthough some beach projects can last for months, they progressively move down the beach fairly quickly, so any given spot along the beach are generally only affected by the turbidity for a few days" and while "algae and coral can be adversely affected by light attenuation associated with turbidity, this type of degradation has not been observed from the monitoring of beach projects." In addition to outlining the protections for threatened and endangered species in Appendix D, FDEP, on the February 5, 2014 call, also stated that the Department works with the permit applicant to try to get a mixing zone that avoids the most sensitive community; burying marine resources is considered an impact, and resources should be outside of the predicted impact area. The applicant is required to stay at least 600 feet away from resources, but if there is an impact, then mitigation is required after the fact. Further, as noted on page D-31 of Appendix D, monitoring must be conducted once per day at the edge of hardbottom if a hardbottom resource is within 1000 meters downcurrent of the turbidity source. Generally speaking, FDEP concludes that the permittee caused the sedimentation if it is present near the project site and requires mitigation or revised plans. The EPA finds the State to have sufficiently documented the expectations associated with this specific provision.

The use of these three demonstrations represents a reasonable method for minimizing degradation associated with any lowering of water quality from these specific permitted activities in OFWs and is consistent with 40 C.F.R. § 131.12(a)(2).

Since the State has concluded that these projects are in the public interest and are necessary at the specific level justified through the implementation of subparagraph 62-4.242(2)(b)2. and has outlined a State regulatory process by which to ensure certain performance levels and practices are achieved, FDEP will be able to ensure that any proposed lowering of water quality related to elevated turbidity levels resulting from these specific projects is consistent with the requirements for high quality waters.

Lastly, because subsection 62-4.242(2)(a) was unchanged and the revisions are contained within the limited scope of exceptions contained in paragraph 62-4.242(2)(b), it is clear that the exception applies only for turbidity, as it relates to these specific beach related permits. The EPA also finds the limited type of activity, along with the process in place to minimize the effects and not preclude the maintenance of a fishable/swimmable level of water quality protection, has been supported through the record supplied by FDEP. Given the statute and FDEP's experience implementing the corresponding permitting program, the EPA believes that FDEP has provided

support for its revisions to subparagraph 62-4.242(2)(b)2. The allowance for an activity or discharge where degradation can occur in high quality waters, upon completion of certain requirements, is consistent with 40 C.F.R. § 131.12(a)(2) and follows the expectations further detailed in Section 4.5 of the WQS Handbook.

Subparagraph 62-4.242(2)(b)3.

The newly renumbered provision, new subparagraph 3., is a non-substantive change that the EPA has reviewed as a new or revised water quality standard. The revision makes it clear that there are three scenarios where the "Department recognizes that it may be necessary to permit limited activities or discharges in Outstanding Florida Waters." The three scenarios are: (1) those relating to public interest and other requirements addressed in subparagraph 62-4.242(2)(a)2. of this section; (2) those relating to dredging and beach nourishment projects; and (3) those where management practices and suitable technology are implemented and there is no alternative to the proposed activity, including the alternative of not undertaking any change, except at an unreasonably higher cost. The EPA approves the editorial, non-substantive changes as being consistent with the CWA and the EPA's implementing regulations. The EPA notes, however, that its approvals of these editorial, non-substantive changes do not re-open the EPA's prior approvals of the underlying substantive water quality standards

Conclusion

In conclusion, due to the level of detail in the State's permitting process and the example requirements provided for the Town of Palm Beach, the EPA finds the implementation of these provisions consistent with the 40 C.F.R. § 131.12(a)(2) requirements for high quality waters. Therefore, the EPA finds the inclusion of subparagraph 62-4.242(2)(b)2. a reasonable addition to the State's antidegradation requirements. For all the reasons outlined above, the revisions to subparagraphs 62-4.242(2)(b)2. and 3. are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

Subparagraph 62-4.242(3)(a)2. was revised and reads as follows:

> (3) Standards Applying to Outstanding National Resource Waters:
> (a) All discharges or activities that may cause degradation of water quality in Outstanding National Resource Waters are prohibited, other than:
> 1. Discharges or activities that are exempted by statute from Department permitting or regulation;
> 2. Those discharges or activities described in sub-subparagraphs 62-4.242(2)(a)1.b., 62-4.242(2)(a)1.c., 62-4.242(2)(a)2.b., and 62-4.242(2)(b)2., F.A.C.
> (b) through (e) No change.

The language in the currently approved subparagraph 62-4.242(3)(a)2. previously was the subject of a recommendation suggested by the EPA in the Agency's October 23, 1991 letter, to the Florida Department of Environmental Regulation. Due to concern with the potential for an interpretation that certain activities may be exempted from certain protections required for Outstanding National Resource Waters (ONRWs), the EPA recommended the activities

referenced in this subparagraph include 62-4.242(2)(a)1.b., 62-4.242(2)(a)1.c. and 62-4.242(2)(a)2.b. However, due to the addition of the revised subparagraph 62-4.242(2)(b)2., the State has now also included the associated turbidity related revisions for beach projects as an activity exempt from the prohibition of discharges or activities that may cause degradation in ONRWs. Because the expectations for ONRWs are different from those for other high quality waters such as the OFWs, the EPA's review considered the guidance provided by the WQS Handbook in conjunction with the information provided as part of the three demonstrations analyis above to make a conclusion as to the appropriateness in adding a fourth exempted discharge or activitiy from the prohibitions on degradation in ONRWs.

Section 4.7 of the WQS Handbook provides the following guidance related to the decision to allow lowering of water quality in ONRWs:

> Outstanding National Resource Waters (ONRWs) are provided the highest level of protection under the antidegradation policy. The policy provides for protection of water quality in high-quality waters that constitute an ONRW by prohibiting the lowering of water quality. ONRWs are often regarded as highest quality waters of the United States: That is clearly the thrust of 131.12(a)(3). However, ONRW designation also offers special protection for waters of "exceptional ecological significance." These are water bodies that are important, unique, or sensitive ecologically, but whose water quality, as measured by the traditional parameters such as dissolved oxygen or pH, may not be particularly high or whose characteristics cannot be adequately described by these parameters (such as wetlands).
>
> The regulation requires water quality to be maintained and protected in ONRWs. The EPA interprets this provision to mean no new or increased discharges to ONRWs and no new or increased discharge to tributaries to ONRWs that would result in lower water quality in the ONRWs. **The only exception to this prohibition, as discussed in the preamble to the Water Quality Standards Regulation (48 F.R. 51402) permits States to allow some limited activities that result in temporary and short-term changes in the water quality of ONRW.** Such activities must not permanently degrade water quality or result in water quality lower than that necessary to protect the existing uses in the ONRW. It is difficult to give an exact definition of "temporary" and "short-term" because of the variety of activities that might be considered. However, in rather broad terms, the EPA's view of temporary is weeks and months not years. The intent of the EPA's provision clearly is to limit water quality degradation to the shortest possible time. If a construction activity is involved, for example, temporary is defined as the length of time necessary to construct the facility and make it operational. During any period of time when, after opportunity for public participation in the decision, the State allows temporary degradation, all practical means of minimizing such degradation shall be implemented. Examples of situations in which flexibility is appropriate are listed in Exhibit 4-1. (Emphasis added.)

As noted in the bold text of the above excerpt, only temporary or short-term changes are allowed in an ONRW. Following the EPA's review of the information provided by the State, it is clear that by making the revisions associated with subparagraph 62-4.242(2)(b)2., the State has now

incorporated a circumstance into the ONRW section of the regulations in which a lowering in water quality is not expected to be temporary. Since states are prohibited from allowing any lowering in an ONRW, other than a temporary lowering, the State has not provided the appropriate level of protection with regard to these turbidity projects in ONRWs. Therefore, the EPA has determined that the revision is not consistent with 40 C.F.R. § 131.12(a)(3) or the CWA and is disapproving pursuant to Section 303(c) of the CWA. Since the EPA is disapproving the revision to subparagraph 62-4.242(3)(a)2., the EPA recommends that the State remove the revision to subparagraph 62-4.242(3)(a)2. as part of a future rulemaking effort.

Section 62-4.244

Paragraph 62-4.244(1)(j) was revised and reads as follows:

(1) Zones of mixing for non-thermal components of discharges.
[(a) through (i) No change.]
(j) ~~Additional standards which apply within mixing zones in Class I, II and Class III waters are as follows:~~
~~1. The dissolved oxygen shall not average less than 4.0 milligrams per liter; and,~~
~~2.~~ Within mixing zones in Class I, Class II, and Class III waters, the ~~The~~ turbidity shall not average greater than 41 Nephelometric Turbidity Units above natural background.
[(k) No change.]

In a letter dated May 29, 2014, from Daryll Joyner, Program Administrator, FDEP, to Annie Godfrey, Chief of the Water Quality Standards Section, USEPA, the State provided an explanation regarding the removal of the reference to the DO criterion that previously existed in this mixing zone provision.

> Paragraph 62-4.244(1)(j)1., F.A.C., in the mixing zone rule was deleted because the provision related to dissolved oxygen (DO) was no longer relevant given the adopted revisions to the state's DO criteria. The provision is no longer relevant because 1) the revised criteria are expressed in terms of saturation rather than concentration; and, 2) the revised criteria can, under some conditions, be below 4.0 mg/L and still be fully protective. Although the specified numeric DO provision was struck from the mixing zone rule, the Department retains the ability to require and enforce fully protective DO requirements within mixing zones [through two other regulatory provisions in the State's water quality standards rules].

The rest of the revisions to this paragraph were non-substantive changes to improve the readability of the provision following the removal of the DO criterion reference. For the reasons outlined in the State's May 29, 2014 letter to the EPA, the revisions to paragraph 62-4.244(1)(j) are reasonable and are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

Subsection 62-4.244(5) was revised and reads as follows:

(5) Mixing zones for dredge and fill permits shall not be subject to the provisions in paragraphs (1)(c) through (j), subsection (2), (3), or (4) of this section, provided that applicable water quality standards are met at the boundary and outside the mixing zone.
[(a) through (b) No change.]
(c) In no case shall the boundary of a Joint Coastal Permit mixing zone be more than 1000 meters from the point of discharge into the waterbody or the boundary of a dredge and fill mixing zone be more than 150 meters downstream in flowing streams or 150 meters in radius in other bodies of water, where these distances are measured from the cutterhead, return flow, discharge, or other points of generation of turbidity or other pollutants.
(d) When determining the appropriate size of a turbidity mixing zone for a Joint Coastal Permit, the Department shall also use the following criteria:
1. Measures will be implemented to minimize the magnitude and duration of turbidity to the maximum extent practicable;
2. Mixing zones shall be kept to the minimum size necessary to meet the turbidity standard; and
3. Mixing zones shall not encompass hardbottom communities, coral resources, or submerged aquatic vegetation beds outside of the authorized impact sites unless those areas are also evaluated as impact sites.

The revisions to paragraph (c) specify that in the case of Joint Coastal Permits, mixing zones can be no larger than 1000 meters from the point of discharge into the waterbody, as opposed to the previous maximum of 150 meters that applied to all dredge and fill mixing zones. As noted previously in this Decision Document, FDEP's Overview Document cited difficulty in meeting the previously-established 150 meter maximum.

As indicated in Section 5.1.5 of the WQS Handbook, the EPA intended that mixing zones be allowed for the discharge of dredged material and "generally result in temporary short-term disruption and do not represent continuous discharge that will affect beneficial uses over a long term." The State's decision to expand the maximum distance allowable for a mixing zone in Joint Coastal Permits is reasonable and the considerations listed in paragraph (d) provide limitations that are intended to ensure the minimum size of mixing zone is selected.

The considerations listed in paragraph (d) are consistent with the WQS Handbook recommendations on the types of considerations that should be part of the analysis in determining whether a mixing zone is appropriate and what factors should be considered. Section 5.1 of the WQS Handbook addresses the limiting of magnitude, duration and size of the mixing zone, on which 62-4.244(5)(d)1. and 2. are intended to provide guidance within the State regulation. Section 5.1 highlights that "water quality standards are met at the edge of that regulatory mixing zone during design flow conditions" and the State should ensure that "the best practicable engineering design is used and that the location of the existing or proposed outfall will avoid significant adverse aquatic resource and water quality impacts of the wastewater discharge." Similar to the provision at 62-4.244(5)(d)3., Section 5.1 of the WQS Handbook recommends consideration of mixing zones on a case-by-case basis to ensure that mixing zones "do not impair the integrity of the water body as a whole," the "physical, chemical and biological

characteristics of the discharge and the receiving system; the life history and behavior of organisms in the receiving system; and the desired uses of the waters" are considered and mixing zones are not permitted "where they may endanger critical areas (e.g., drinking water supplies, recreational areas, breeding grounds, areas with sensitive biota)."

Additionally, based on discussions during the February 5, 2014 call with FDEP, the Department indicated that if a 1,000 meter mixing zone is granted and the sample data gathered within the mixing zone show the mixing zone could be smaller, during the applicant's next permit cycle, the Department will grant the smaller mixing zone. Furthermore, the rule requires justification for the size of future mixing zones and uses past monitoring data to support those decisions.

Because 40 C.F.R. § 131.13 allows for policies generally affecting the application and implementation of state water quality standards, the inclusion of paragraphs (c) and (d) is a reasonable addition to the State's water quality standards. For all the reasons outlined above, the revisions to paragraphs (c) and (d) are consistent with 40 C.F.R. Part 131 and the CWA, and are approved by the EPA pursuant to Section 303(c) of the Act.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA) requires federal agencies, in consultation with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), to ensure that their actions are not likely to jeopardize the continued existence of federally listed species or result in the destruction or adverse modification of designated critical habitat of such species.

With regard to consultation activities for section 7 of the ESA, the EPA Region 4 office transmitted Biological Evaluations to the NMFS office and three FWS offices in letters dated May 7, 2014. The EPA received concurrence from the Panama City FWS office in a letter dated May 19, 2014, and a combined concurrence from the Vero Beach and Jacksonville FWS offices in a response dated June 30, 2014. The EPA's decision to approve the triennial review provisions contained in this decision document is subject to the results of consultation under section 7 of the ESA with the NMFS office.

Conclusions

Based on the reasons outlined above, it is our conclusion that the requirements of the CWA and 40 CFR Part 131 have been met for the new or revised water quality standards, with the exception of subparagraph 62-4.242(3)(a)2., which the EPA is disapproving. Additionally, the following revisions were determined to not be new or revised water quality standards: the second sentence of subsection 62-302.530(6), the addition of the phrase "Annual average values shall be based on a minimum of three samples, with each sample collected at least three months apart" for Class I, II and III waters in subsection 62-302.530(67) and all revisions to subsection 62-303.300(2), subsection 62-303.360(1), subsection 62-303.370(1), subsection 62-303.380(1), subsection 62-303.460(3), subsection 62-303.470(3), subsection 62-303.480, subsection 62-303.500(3) and paragraph 62-303.720(2)(f). Therefore, with the exception of those provisions

which the EPA is disapproving or were not determined to be new or revised water quality standards, the revised criteria addressed in this Decision Document are approved by the EPA pursuant to Section 303(c) of the Act.

11/10/2014
Date

V. Anne Heard
for Heather McTeer Toney
Regional Administrator